



REAL ESTATE TRANSFER NEWS
JANUARY 1989

This newsletter shall address questions asked the Bureau of Utility & Special Taxes since the issuance of our last letter of June 1988.

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes:

1. Concerning the Newsletter of January 1987, question number 12, wouldn't "A" pay the fee on the conveyance to "B" and then the conveyance from "B" to "C" (agent to principal) be exemption 9?

Yes. The third paragraph of question 12 should have read "when "A" sells to "B" (agent), a fee is due. Then when "B" conveys to "C" (principal), exemption 9 may be used."

2. A bank obtains property pursuant to a foreclosure on which they held a mortgage and used exemption 14. The bank then conveys title to a mortgage insurer. Does any exemption apply?

No. A conveyance at the option of the mortgage insurer is not exempt from a fee. Most mortgage insurer contracts provide that the insurer will make the mortgagee bank whole by 1) paying the difference between the fair market value (generally the bid price if sold by sheriff's sale) of the conveyed property and the cost to the bank of its defaulted loan, or 2) purchase the property from the insured for all insurer costs incurred.

If the insurance contract calls for the transfer from the bank to the insurer regardless, that is, the insurer does not have an option (unlikely), then the bank is an agent and both transfers would be exempt. The transfer to the bank would be a foreclosure and the transfer from the bank to the insurer would be agent to principal.

The following question and answer is reprinted from the May 1985 Newsletter for further explanation:

- "7. Bank (B) forecloses on homeowner (H). The court transfers to "B" the property of "H." "I", the insurer of the mortgage will pay off the amount owed to "B" by "H," but only if "B" transfers the property to "I."

"Is the conveyance from "B" to "I" subject to a return and fee?

"Yes, the mortgage guarantor "I" is in effect acting as a third party, not as an agent for the bank. The insurer does not have an obligation to purchase the property; "I" has the sole obligation of insuring against default, a nonproperty right.

"The normal transaction, however, is that the insurer would buy out the bank's mortgage and foreclose. In this case, the rules of the sheriff's sale would apply with respect to the fee."

3. "A" father-in-law gifts property to "B" his daughter-in-law. "A"'s son is deceased. Is a fee due or can exemption 8 be used?

Another question needs to be asked. Has "B" remarried? If the answer is no, then exemption 8 would apply since "B" would still be considered "A"'s daughter-in-law. If the answer is yes, a fee is due since "B" is now the in-law of her present husband's parents.

4. Question 5 of the "Real Estate News," June 1988, referred to six mortgage companies that are government agencies. Are there any more?

Yes, they are:

- Federal Home Loan Mortgage Corporation
- Federal National Mortgage Association
- Farmers Home Administration
- Farmers Home Loan Mortgage Corporation
- Federal Housing Authority
- Government National Mortgage Association (Ginnie Mae)

5. Please explain when Exemption 4 (sec. 77.25(4), Stats.), may be claimed?

If a county causes property to be sold for back taxes in accordance with Chapter 74 or 75 of the Wisconsin Statutes, the conveyance would be exempt from the return and fee. If the county receives the tax deed by operation of these laws, and later sells that property to a third party, that sale is exempt from the fee [sec. 77.25(2), Stats.], but a return must be filed.

6. What is the Department's position when two partners sell their partnership interest to the sole remaining partner? It is assumed that the deeds to all real estate owned by the partnership is in the name of the partnership.

We have concluded that:

- A. A fee is due on the dissolution of the partnership;

- B. The dissolution was caused by the sale of two partnership interests in the partnership to the remaining sole partner;
- C. The fee is based upon the fair market value of all of the real property transferred by the partnership to the sole remaining partner; and
- D. The fee is payable when a deed is filed recording the conveyance from the partnership to the sole remaining partner or when any deed is filed reflecting the partnership dissolution.

After reviewing secs. 178.25, 178.26, and 178.36 of the Wisconsin Statutes, it is concluded that the partnership actually dissolved even though the business may be carried on. This triggers a fee pursuant to Tax 15.03(4), Wis Adm. Code, on the total value of the real property.

- 7. Do government agencies such as Farmers Home Administration have to provide the tax identification of sellers of real property?

Yes!

- 8. A buyer of real property must pay delinquent property taxes to receive an unencumbered deed to such property. Is this considered consideration for the property and as such, subject to the fee?

Yes!

- 9. An apartment unit is sold in an apartment house or complex but no common areas are included. Is this subject to the fee?

Yes, by virtue of the attachment to the land, the apartment house is real property for transfer fee purposes and is treated as a condominium transfer.

- 10. Church "A" buys a parcel of land upon which Church "B" builds a church building. "A" and "B" agree that if "B" pays half the cost of the land back, "A" will deed the entire parcel to "B". The agreement is oral but is completed some years later. Is there a fee and in what amount?

There is a fee due based on the actual consideration paid plus the fair market value of the half gifted at the time of the gift.

- 11. A public utility exchanges properties with a fraternal organization. The parcel acquired by the utility will be used as utility property. Are both transfers taxable?

The transfer from the fraternal organization will be exempt as a condemnation acquisition. The transfer from the utility will be taxable at its value.

12. A utility cancels an easement by deed. Is a fee and return due?

No, the transfer is excluded from the definition of conveyance. No return and no fee is necessary.

13. Father and son are each 50% shareholders of "A" Corporation. Father dies. Personal representative is appointed and desires to liquidate "A" Corporation prior to closing the estate. Does the personal representative succeed to the exemption of sec. 77.25(15), Stats.?

Yes, the personal representative succeeds to the interests of the deceased and may take advantage of the exemption.

NOTE: This opinion is still under review and may be withdrawn.

14. Bank forms Development Corporation to develop parcel of land into a bank office building project. Bank deeds parcel to corporation. Is a fee due?

Yes, there is no exemption even though Bank owns all the stock of the corporation.

15. Developer purchases property on land contract with metes and bounds description. The land is platted along with an adjacent parcel already owned. Some of the lots straddle the two parcels. Partial satisfactions of the land contract are given as the lots are sold and the vendor is paid. For transfer fee purposes, how should the series of transactions be handled?

The developer should overlay the plat on the metes and bounds description and apportion the fee to each lot as reasonably as possible. A fee is paid with each partial satisfaction. When the final deed is given satisfying the land contract reciting the metes and bounds description, a return should be filed noting the lot numbers and document numbers of the partial satisfactions and reciting that the fee has already been paid in full.

16. Local housing authority issues bonds for low interest mortgages. The Origination and Servicing Agreement provides for an exchange of quit claim deeds from the Mortgagors to the Issuer and from the Issuer to the Mortgagors. Are these conveyances exempt pursuant to sec. 77.25(10), Stats.?

Yes, the exchange of deed serves to perfect the lien of the Issuer of the bonds.

17. Parent gifts property to a partnership comprised of the parent (one-half interest) and two children (one-fourth interest each). What fee is due?

Since the parent has a 50% interest in the partnership, one half is exempt pursuant to Tax 15.02(1), Wis Adm. Code. The remainder is

not exempt pursuant to sec. 77.25(8), Stats., because the gift is to the partnership, not the children. Likewise, the remainder is not exempt pursuant to sec. 77.25(15), Stats., because the two children are not lineal ascendants or descendants of one another.